

**AMENDMENTS TO THE CLAIMS**

Claim 1 (Currently amended): An isolated nucleic acid comprising a nucleic acid that specifically hybridizes under stringent conditions comprising washes at 65°C in 0.2x SSC to ~~a nucleic acid the complement of a polynucleotide~~ consisting of the sequence of SEQ ID NO:1, and wherein the nucleic acid that encodes a transcription factor that binds to and transactivates the Her-2/neu Ets response element.

Claim 2 (Original): The isolated nucleic acid of claim 1, wherein said nucleic acid comprises a nucleic acid that encodes an amino acid sequence as set forth in SEQ ID NO: 2.

Claim 3 (Original): The isolated nucleic acid of claim 2, wherein said nucleic acid comprises a nucleotide sequence as set forth in SEQ ID NO: 1.

Claim 4 (Original): The nucleic acid of claim 1, wherein said nucleic acid comprises a nucleic acid having the nucleotide sequence of a nucleic acid amplified from a genomic library using the primer pairs designated by SEQ ID No. 13 and SEQ ID NO. 14.

Claim 5 (Canceled).

Claim 6 (Original): The nucleic acid of claim 1, wherein said nucleic acid further comprises a vector.

Claim 7 (Original): The nucleic acid of claim 1, wherein said nucleic acid comprises a nucleic acid that encodes a polypeptide consisting of an amino acid sequence as set forth in SEQ ID NO.: 7.

Claim 8 (Original): The isolated nucleic acid of claim 1, wherein said nucleotide sequence has a smallest sum probability of less than about 0.5 when compared to a nucleotide sequence as set forth in SEQ ID NO: 6 using a BLASTN algorithm using default parameters.

Claim 9 (Original): The isolated nucleic acid of claim 8, wherein said smallest sum probability is less than about 0.2.

Claim 10 (Original): The nucleic acid of claim 1, wherein said nucleic acid comprises a nucleic acid that encodes an amino acid sequence as set forth in SEQ ID NO: 12 or conservative substitutions of said amino acid sequence.

Claim 11 (Original): The nucleic acid of claim 10, wherein said nucleic acid is free of dideoxynucleotides.

Claim 12 (Original): The nucleic acid of claim 10, wherein said nucleic acid is single stranded.

Claim 13 (Original): The nucleic acid of claim 12, wherein said nucleic acid is a sense strand.

Claims 14-15 (Canceled).

Claim 16 (Currently amended): An isolated nucleic acid comprising a nucleic acid that specifically hybridizes under stringent conditions comprising washes at 65°C in 0.2x SSC to ~~a nucleic acid the complement of a polynucleotide~~ consisting of the cDNA sequence comprising SEQ ID NO:15, and wherein the nucleic acid ~~that~~ encodes a transcription factor that binds to and transactivates the Her-2/neu Ets response element..

Claim 17 (Original): The nucleic acid of claim 16, wherein said nucleic acid comprises a nucleic acid that encodes an amino acid sequence of amino acids 2 through 371 of SEQ ID NO: 16.

Claim 18 (Original): The nucleic acid of claim 17, wherein said nucleic acid comprises a nucleotide sequence as set forth in SEQ ID NO: 15.

Claims 19-20 (Canceled).

Claim 21 (Original): The nucleic acid of claim 16, wherein said nucleic acid further comprises a vector.

Claim 22 (Original): The nucleic acid of claim 16, wherein said nucleic acid is labeled.

Claim 23 (Original): The nucleic acid of claim 22, wherein said nucleic acid is free of dideoxynucleotides.

Claim 24 (Original): The nucleic acid of claim 22, wherein said nucleic acid is single stranded.

Claim 25 (Original): The nucleic acid of claim 24, wherein said nucleic acid is a sense strand.

Claim 26 (Original): The isolated nucleic acid of claim 22, wherein said label is a radionuclide.

Claims 27-70 (Canceled).

Claim 71 (Currently amended): A transfected cell comprising a ~~heterologous~~heterologous nucleic acid of claim 1.

Claims 72-78 (Canceled).

Claim 79 (Currently amended): A kit for the detection of a ESX gene ~~or polypeptide~~, said kit comprising a container containing a nucleic acid that specifically hybridizes under stringent conditions to a nucleic acid of claim 1 wherein said stringent conditions comprise 0.01 to 1.0 M sodium ion concentration (or other salts) at pH 7.0 to 8.3 and the temperature is 30°C.

Claims 80-81 (Canceled).

Claim 82 (Previously presented): The nucleic acid of claim 1, wherein said nucleic acid is labeled with a detectable label.

Claim 83 (Previously presented): The nucleic acid of claim 82, wherein said detectable label is selected from the group consisting of a radiolabel, an enzyme, a colorimetric label, a magnetic bead, a fluorescent label, and a biotin.

Claim 84 (Previously presented): The kit of claim 79, wherein said nucleic acid is labeled with a detectable label.

Claim 85 (Previously presented): The kit of claim 84, wherein said detectable label is selected from the group consisting of a radiolabel, an enzyme, a colorimetric label, a magnetic bead, a fluorescent label, and a biotin.

Claim 86 (Previously presented): An isolated nucleic acid comprising a nucleic acid that encodes a polypeptide consisting of the amino acid sequence of SEQ ID NO:2.

Claim 87 (Previously presented): The nucleic acid of claim 86, wherein said nucleic acid comprises a vector.

Claim 88 (Previously presented): An isolated nucleic acid comprising a nucleic acid that encodes a polypeptide consisting of the amino acid sequence of SEQ ID NO:16.

Claim 89 (Previously presented): The nucleic acid of claim 88, wherein said nucleic acid comprises a vector.